IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 17895 of 1995

Between:

1 M/s. Godavari Bore Wells, Nizambad rep. by Managing Partner, Sri E. Ranga Reddy Camp Add: H.No.11-36, Beside of Apsara Lodge, Bhadrachalam, Khammam Dist.
2 M/s. Sri Sai Bore Wells, Hyderabad rep. by Partner, Sri E. Ranga Reddy Camp Add: H.No.11-36, Beside of Apsara Lodge, Bhadrachalam, Khammam Dist.

..... PETITIONER(S)

AND

1 The Executive Engineer Panchayat Raj, Kothagudem
2 The District Collector, Khammam
3 The Commissioner of Commercial Taxes A.P., Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially in the nature of certiorari quashing the impugned endorsements dt: 17-7-1995.

Counsel for the Petitioners : MR.S.RAVI.

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

The Court at admission stage made the following :

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ORDER : (per Sri Bilal Nazki, J)

The grievance of the petitioner is that the Executive Engineer had passed an order on 10.07.1995, informing him that the payments to the petitioner shall be made after deducting sales tax. He had communicated that this was being done on the instructions of the Commercial Tax Department.

We have heard learned Counsel for the parties. Counter has not been filed.

Contract to the petitioner is that he would dig 4 ½ inch borewells at Rs.130/- for running metre anywhere in Khammam District and he would also dig borewells of 6 ½ inch at Rs.180/- per running metre anywhere in Khammam District. He submits that in view of this contract, he had not a work contract with the respondents and therefore he was not subject to sales tax and particularly his payment was not subject to any deduction at source.

Section 5-H of the A.P.General Sales Tax Act, 1957 (hereinafter referred to as 'the Act') empowers the authorities to deduct tax at source. Section 5-H(1) reads as under;

> *"Notwithstanding anything contained in this Act, the Central Government, or the State Government, or an industrial, commercial or trading undertaking of the Central Government or of the State Government or a local authority or a statutory body, shall deduct from out of the amounts payable by them to a dealer in respect of works contracts of the works specified in Section 5-F and 5-G executed for them, an amount calculated at the rate of four percent of the total turnover."*

Section 5-H(1) of the Act is applicable if the works contracts fall within the works specified in Sections 5-F and 5-G of the Act. The work that was being conducted and executed by the petitioner neither falls under Section 5-F nor under 5-G of the Act. Therefore, in our opinion, Section 5-H of the Act would not apply to the work that was being conducted by the petitioner. Therefore, the

letter addressed by the Executive Engineer was without any authority of law, which is accordingly quashed.

Writ Petition is accordingly allowed. No costs.

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(BILAL NAZKI, J)

31st August, 2004.

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(S.ANANDA REDDY, J)

ajr

To

1 The Executive Engineer Panchayat Raj, Kothagudem
2 The District Collector, Khammam
3 The Commissioner of Commercial Taxes A.P., Hyderabad

4 Two C.Cs. to the Government Pleader for Commercial Taxes, High

Court Buildings, Hyderabad (O.U.T)

5 Two C.D. copies.